

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

ADAM J. HEITKEMPER,

Plaintiff,

vs.

OFFICER SHIRLEY, SGT.
SMART, SGT. WONG, OFFICER
WEB, AND LT. NEITER,

Defendants.

Cause No. CV 10-0062-BLG-RFC-CSO

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE TO
GRANT PLAINTIFF'S MOTION TO DISMISS

Plaintiff, Adam HeitKemper, is a prisoner proceeding without counsel. He has been granted permission to proceed in forma pauperis in this action filed under [42 U.S.C. § 1983](#). The Court has jurisdiction pursuant to [28 U.S.C. § 1331](#).

Pending is HeitKemper's Motion to Dismiss. (Court Doc. 13). Defendants did not respond to the motion. Pursuant to [Rule 41\(a\)\(2\) of the Federal Rules of Civil Procedure](#), unless a case is dismissed before a defendant appears in the case or the parties stipulate to the dismissal, "an action may be dismissed at the plaintiff's request only by court

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order, on terms that the court considers proper." There being no objection to the motion, the Court will recommend this matter be dismissed without prejudice.

At all times during the pendency of this action, HeitKemper SHALL IMMEDIATELY ADVISE the Court and opposing counsel of any change of address and its effective date. Such notice shall be captioned "NOTICE OF CHANGE OF ADDRESS." The notice shall contain only information pertaining to the change of address and its effective date, except that if HeitKemper has been released from custody, the notice should so indicate. The notice shall not include any motions for any other relief. Failure to file a NOTICE OF CHANGE OF ADDRESS may result in the dismissal of the action for failure to prosecute pursuant to [Federal Rule of Civil Procedure 41\(b\)](#).

Based on the foregoing, the Court issues the following:

RECOMMENDATIONS

1. HeitKemper's Motion to Dismiss (Court Doc. 13) should be granted and this matter dismissed without prejudice.

2. The Clerk of Court should be directed to enter judgment pursuant to [Rule 58 of the Federal Rules of Civil Procedure](#) and close this case.

3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to [Rule 24\(a\)\(3\)\(A\) of the Federal Rules of Appellate Procedure](#) that any appeal of this decision would not be taken in good faith.

NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to [28 U.S.C. § 636\(b\)\(1\)](#), the parties may serve and file written objections to these Findings and Recommendations within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. As this deadline allows a party to act after the Findings and Recommendations is served, it falls under [Fed.R.Civ.P. 6\(d\)](#). Therefore, three (3) days are added after the period would otherwise expire.

Any such filing should be captioned "Objections to Magistrate Judge's Findings and Recommendations."

A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge and may waive the right to appeal the District Court's order. [*Martinez v. Ylst*, 951 F.2d 1153 \(9th Cir. 1991\)](#).

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to [Fed.R.App.P. 4\(a\)](#), should not be filed until entry of the District Court's final judgment.

DATED this 21st day of December, 2010.

/s/ Carolyn S. Ostby
Carolyn S. Ostby
United States Magistrate Judge